

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICHAEL A. SKISCIM,

Plaintiff,

No. C 11-5166 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

SAN QUENTIN STATE PRISON,

Defendants.

Plaintiff, a prisoner at the California Correctional Center in Susanville, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations

omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that when he arrived at San Quentin State Prison he passed the physical, and that “[s]hortly after” that he contracted MRSA, which is a virulent staphylococcus infection. He says that he had to have surgery on his shoulder to eliminate the infection, and that as a result he has “major problems” with his left shoulder.

As noted above, one element of a section 1983 claim is that a right secured by the Constitution or laws of the United States was violated. *Id.* Medical claims like this one are actionable under section 1983 only if plaintiff is able to allege facts plausibly asserting that he was the victim of deliberate indifference to a serious medical need, a violation of the Eighth Amendment’s proscription against cruel and unusual punishment. See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th

1 Cir. 1997) (en banc). A claim of medical malpractice or negligence is insufficient to make
2 out a violation of the Eighth Amendment. See *Toguchi v. Chung*, 391 F.3d 1051, 1060-61
3 (9th Cir. 2004). Here, plaintiff alleges no more than that he passed a physical, then
4 contracted MRSA. This is not sufficient to allege even negligence, much less deliberate
5 indifference to a serious medical need. And plaintiff has named as a defendant only "San
6 Quentin State Prison," which is a state agency and cannot be sued in federal court. See,
7 e.g., *Brown v. Cal. Dep't of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (holding that Eleventh
8 Amendment immunity extends to suits against state agencies; California Department of
9 Corrections and California Board of Prison Terms entitled to 11th Amendment immunity);
10 *Allison v. Cal. Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969) (California Adult Authority
11 and San Quentin Prison not persons within meaning of Civil Rights Act). For these
12 reasons, the complaint will be dismissed with leave to amend.

13 CONCLUSION

14 1. For the foregoing reasons, the complaint is **DISMISSED** with leave to amend, as
15 indicated above, within thirty days from the date of this order. The amended complaint
16 must include the caption and civil case number used in this order and the words
17 AMENDED COMPLAINT on the first page. Because an amended complaint completely
18 replaces the original complaint, plaintiff must include in it all the claims he wishes to
19 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
20 incorporate material from the original complaint by reference. Failure to amend within the
21 designated time will result in the dismissal of these claims.

22 2. It is the plaintiff's responsibility to prosecute this case. He must keep the court
23 informed of any change of address by filing a separate paper with the clerk headed "Notice
24 of Change of Address," and must comply with the court's orders in a timely fashion.

25 **IT IS SO ORDERED.**

26 Dated: November 30, 2011.



PHYLLIS J. HAMILTON
United States District Judge

28 P:\PRO-SE\PJH\CR.11\SKISCIM5166.DWLTA.wpd